

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

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| BILLY GRIFFITH,   | : |   |
| Plaintiff,  | : | Case No. 3:09cv00213                      |
| vs.   | : | District Judge Walter Herbert Rice        |
| CAROLYN W. COLVIN,<br>Acting Commissioner of the Social<br>Security Administration, | : | Chief Magistrate Judge Sharon L. Ovington |
| Defendant.  | : |   |

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**REPORT AND RECOMMENDATIONS<sup>1</sup>**

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This case is before the Court upon the Motion For Allowance Of Attorney Fees filed by Plaintiff's counsel (Doc. #24) and the record as a whole. The Motion seeks an award of attorney fees under 42 U.S.C. §406(b)(1) in the total amount of \$13,000.00. The Commissioner does not object to the reasonableness of the Motion. (Doc. #24, PageID at 133). In the absence of opposition by the Commissioner, the Motion, Memorandum, and supporting Exhibits establish that an award to Plaintiff's counsel of \$13,000.00 in attorney fees is warranted under 42 U.S.C. §406(b)(1).

The \$13,000.00 award of attorney fees under §406(B)(1) is subject to offset by the

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendations.

amount of Equal Access to Justice Act (EAJA) fees previously awarded to Plaintiff's counsel. *See Jankovich v. Bowen*, 868 F.2d 867, 871 n.1 (6th Cir. 1989). Plaintiff's counsel has been previously awarded a total of \$3,000.00 in fees under the EAJA.

Accordingly, the Court hereby **RECOMMENDS** that:

1. Plaintiff's Attorney's Motion For An Award Of Attorney Fees Under 42 U.S.C. §406(b) (Doc. #24) be GRANTED;
2. The Commissioner be directed to pay Plaintiff's attorney fees pursuant to 42 U.S.C. §406(b)(1) in the amount of \$13,000.00;
3. Plaintiff's counsel be directed to reimburse Plaintiff the amount of previously awarded EAJA fees, totaling \$3,000.00; and
4. The case remain terminated on the docket of this Court.

December 17, 2014

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s/Sharon L. Ovington  
Sharon L. Ovington  
Chief United States Magistrate Judge

## NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).